

ATTORNEY GENERAL'S REPORT REGARDING THE JANUARY 21, 2015, OFFICER INVOLVED SHOOTING IN DERRY, NEW HAMPSHIRE

I. INTRODUCTION

New Hampshire Attorney General Joseph A. Foster announces the completion of the investigation into the officer-involved shooting in Derry, New Hampshire on January 21, 2015, that resulted in the death of Andrew Toto (age 54) and a determination that Derry Police Officer Kevin Ruppel's use of deadly force was legally justified.¹

This report summarizes the Attorney General's findings and conclusions based on information gathered during the investigation, including Andrew Toto's autopsy, lab testing, the scene examination, eyewitness interviews, photographs, the officer's cruiser camera video, the forensically-enhanced version of the video, and other investigative interviews and reports.

The investigation has revealed that on January 21, 2015, a 911 caller reported that Andrew Toto was armed, suicidal, and was threatening suicide by cop. Derry Police Officer Kevin Ruppel overheard radio transmissions telling officers to be on the lookout for Toto and eventually spotted Toto and pursued him. Instead of stopping, Toto endangered other people on the road by fleeing from Officer Ruppel, driving into oncoming traffic, and passing cars in a no-passing zone. Eventually, Toto stopped fleeing and pulled over. However, instead of surrendering, Toto used his truck for cover and started firing his shotgun at Officer Ruppel.

¹ The completion of this report was delayed by several months because of the time involved in getting the video from the video camera located inside Officer Ruppel's cruiser enhanced. Once the video was enhanced, it prompted additional investigative steps.

Officer Ruppel got out and took cover behind his police SUV cruiser, which was about 250 feet away from Toto. As Toto continued to fire at Officer Ruppel, Ruppel managed to step out from the cover of his police cruiser a few times and return fire. The exchange of gunfire ended when one of Officer Ruppel's shots hit Toto, killing him.

For the reasons set forth in more detail in this report, the Attorney General has determined that Derry Police Officer Kevin Ruppel's use of deadly force was legally justified.

II. FACTUAL BACKGROUND

A. E-911 call and dispatch records

On January 21, 2015, at about 8:00 a.m., Andrew Toto's wife, Jean Toto called 911. She reported that her husband had just left their house in a 2011 blue Chevy Silverado traveling toward Lake Massabesic, and that he was "drunk." She reported that he was suicidal and had a shotgun. Specifically, Jean Toto said her husband was "looking for a suicide by cop."

Derry Police Department released a BOLO ("Be On The Look Out") broadcast for a blue Chevy pick-up truck, NH license plate #3171785, being driven by Andrew Toto, traveling from Pinyon Place to Lake Massabesic. Other information relayed included that a domestic disturbance call had been received, and that Andrew Toto had left his residence highly intoxicated. The BOLO warned officers that Toto was reportedly armed with a shotgun, and his wife was concerned that he may attempt "suicide by cop."

One of the officers who learned of the BOLO was Derry Police Officer Kevin Ruppel. He was heading toward Pinyon Place when he spotted Toto's truck traveling in the opposite direction, heading westbound on Scobie Pond Road at about 8:12 a.m. Officer

Ruppel told dispatch that Toto's truck had just passed him. Within seconds, Ruppel had turned around his marked cruiser, as he reported to dispatch that he was "trying to catch up to [Toto]." Officer Ruppel reported that Toto was "in the head-on lane accelerating - must be going about 50 [mph] into the head-on traffic."

Derry Sergeant Christopher Talbot advised Officer Ruppel over the radio to "just stay behind" and "don't pursue him." Officer Ruppel agreed and reported, "[H]e's coming your way. Be careful. He is all over the road." A few moments later, Officer Ruppel radioed, "He stopped. He's getting out." Dispatch called additional units to respond to the area of Scobie Pond Road and Julian Road.

A few seconds later, Sgt. Talbot was heard advising all responding units to "take up a good position" and to "use cover." Sgt. Talbot then advised Officer Ruppel that he (Talbot) will try to "talk to him (Toto) over the speaker phone," but Talbot could not get Officer Ruppel to respond. Immediately thereafter, Sgt. Talbot reported, "Shots fired. Shots fired." Seconds later, Officer Ruppel radioed, "He's down. I might have hit him. I can't tell.... He's leaning prone on the opposite side of the car." Sgt. Talbot requested an ambulance.

Derry Emergency Medical Services responded and transported Toto to Parkland Medical Center in Derry. Toto was unconscious and said nothing to the officers or responding EMS personnel. Toto was still unconscious when he arrived at the emergency room, and was later pronounced dead.

B. Private citizens who witnessed the incident

1. Colleen Ramsey

At about 8:00 a.m. on January 21, 2015, Colleen Ramsey was driving westbound on Scobie Pond Road with her three children (ages 5, 3 and 11 months). She was traveling

behind a silver Volkswagen Jetta when she saw a police SUV travel past her in the opposite direction. A short distance later, a gray pick-up truck traveling westbound sped past both her and the Volkswagen in front of her by passing them in a no-passing zone, directly into the path of an oncoming vehicle. A short time later, she saw a police SUV cruiser behind her with its' emergency lights on. Both she and the Volkswagen pulled to the side of the road and allowed the police cruiser to pass. She then pulled back on the roadway and continued westbound.

Ramsay was forced to stop again, a short distance later, because she saw the same gray truck pulled over into what she believed was a driveway. The police cruiser was also stopped on the side of the road. Ramsay heard "pops" that she believed were gun shots. She did not see anyone by the truck, but saw the officer behind the driver's side of his car, looking toward the truck. Fearing for her children, Ramsey backed her vehicle up, turned around, and drove away.

2. Cindy Blake

On January 21, 2015, Cindy Blake was driving westbound on Scobie Pond Road in a silver Volkswagen Jetta, in front of Colleen Ramsey's minivan. Blake believed the speed limit was between 35 and 40 M.P.H. and said there were children and school buses in the area. A tan-gold truck also traveling westbound sped past her in the oncoming lane, passing both her and the vehicle behind her (Ramsey). Blake thought the truck was driving too fast and recalled thinking of the driver, "his wife must be pregnant."

About 10-15 seconds later, a police SUV cruiser with its emergency lights and sirens on passed both her and the vehicle behind her. Shortly thereafter near a slight bend in the road, she saw the police cruiser stopped in the road. An officer was crouched at the rear

corner of the cruiser and was shooting toward a truck near a house. She did not recognize the truck as the same one that had passed her. Blake recalled hearing at least two shots and then she backed up, turned around, and left the area. When she looked in her rear view mirror, she saw that the woman in the minivan behind her (Ramsey) was already backing out and leaving the area.

3. Jacqueline Lane

At approximately 8:05 a.m. on January 21, 2015, Jacqueline Lane was in the living room of her house at 46 Scobie Pond Lane when she heard “a loud shot.” A few seconds later, she heard another sound which she described as a gunshot, but not as loud. She went to the window of her house that faced Julian Road and saw a gray Chevrolet pick-up truck outside. A man stood on the driver’s side of the truck holding what she described as a rifle. Lane saw him move up and down behind the truck for cover and aiming his rifle down Scobie Pond Road. She heard what she described as a “barrage” of shots that sounded like they were coming from farther away. She then looked up the street where the man had been aiming his rifle and saw police lights.

Lane told investigators that after this “barrage” of gunshots, the man behind the truck held his hands in the air, and slowly fell to the ground. Lane did not recall hearing any gun shots after that. Lane said that she believed that the man was going to surrender, but then saw that he was slowly falling to the ground. She described him as looking “shaky” when he raised his hands. Lane believed that he had already been shot before he put his hands up. She did not recall hearing the man say anything when he did so.

Lane did not recall what the man did with the rifle he was holding, but she did not see it in his hands when his hands were raised.

4. Leslie Seaboyer

On the morning of January 21, 2015, Leslie Seaboyer was upstairs in his home at 56 Scobie Pond Road. He heard loud male voices, followed by 2 shots. Seaboyer was unable to hear what was said. He then heard another string of shots, two of which he believed passed by his house. He believed he heard a total of approximately 10 shots being fired.

Initially, Seaboyer thought his neighbor may have shot at a coyote. He then looked out the window and saw police cruisers; one was parked by Julian Road and another was further down on Scobie Pond Road. Seaboyer said it sounded like an exchange of gunfire, one had a low pitch sound and one had a high pitch sound. He called the Derry Police Department's non-emergency number to report what he was seeing.

5. Kelli Bruno

At about 8:20 a.m. on January 21, 2015, Kelli Bruno was in the bedroom of her home at 60A Scobie Pond Road when she heard what she described as "about 6" gunshots in row. She told investigators that there was a 5-10 second pause, after which she heard about another 4 shots. Bruno described the first 6 shots as more muffled than the second four shots, and she believed they may have been from different guns. She looked out the window initially, but could not see anything from where she was. About 40 seconds later, she heard police cruisers and an ambulance, one after the other.

C. Officer Kevin Ruppel's statements

On January 29, 2015, and again on July 23, 2015, Officer Kevin Ruppel was interviewed by investigators from the New Hampshire State Police Major Crime Unit. During those interviews, Officer Ruppel described the events that took place on January 21, 2015.

Officer Ruppel was scheduled to work from 7:00 a.m. to 3:00 p.m. that day. He was parked in his cruiser when he heard dispatch broadcast a BOLO for a blue Chevrolet pick-up truck in the area of Pinyon Place in Derry. He heard the dispatcher say that the female 911 caller reported her husband had left their house highly intoxicated, was suicidal, and had threatened to commit “suicide by cop.” Ruppel ran the truck’s license plate reported by dispatch and noted an electronic bench warrant was outstanding for the registered owner. He then proceeded toward Pinyon Place by traveling onto Route 28 and turning onto Scobie Pond Road.

As he drove on Scobie Pond Road, Officer Ruppel saw a truck matching the BOLO’s description traveling in the opposite direction. When he turned to follow, the truck accelerated and then drove into the oncoming lane of traffic to pass two other vehicles. Officer Ruppel activated his blue emergency lights as he followed, passing several cars. When he came around a left hand curve in the roadway he observed the truck stop after making a right-hand turn into Julian Road.

The driver of the truck was subsequently identified as Toto. Uncertain of Toto’s intentions, Officer Ruppel slowed his cruiser to a stop at a distance on Scobie Pond Road. Toto exited and got out of the truck holding what Officer Ruppel believed to be a rifle. Ruppel yelled “Gun!” over his radio. Then, as Toto leveled and aimed the rifle at the cruiser, Officer Ruppel got out and took cover behind the rear of his vehicle. He noted that the two civilian motorists he passed (Ramsey and Blake) were now stopped behind him in the roadway. Officer Ruppel heard a shot being fired and tried to advise dispatch. He was uncertain if he heard another shot fired before he peeked and saw Toto using the bed of the truck to aim the rifle at him. Fearing for his safety and the safety of the drivers in the road

behind him, Officer Ruppel began to return fire. He did not recall if Toto fired again right away, or waited until later.

Ruppel believed that he was too far away for his pistol to be effective. So, he attempted to retrieve his department-issued rifle from inside the cruiser by crawling along the passenger side of the car and opening the passenger door. However, Ruppel discovered that he was unable to safely reach the release for the rifle. He returned to the rear passenger-side quarter panel of the cruiser and exchanged gunfire with Toto. He described what occurred as being similar to “whack-a-mole,” where each man was firing and then ducking down for cover. He believed that he fired 5-6 shots at Toto at that time. Officer Ruppel explained to investigators that each time he poked his head out from behind the cruiser, Toto had moved into a different position behind the truck as they exchanged fire.

Officer Ruppel recalled that at one point he looked out from cover to see Toto was moving to the rear of the truck, close to the rear wheel well. He could not see Toto’s arms, but believed Toto was still armed and seeking another vantage point from which to shoot at Ruppel. Continuing to believe that his life was at imminent risk as well as the lives of those civilians behind him, and believing that deadly force was necessary to defend himself and others, Officer Ruppel fired at Toto. He saw Toto twitch, after which he immediately took cover. When he peeked out again, Toto was lying down under the truck. Believing Toto may have been trying to shoot from underneath the truck, Officer Ruppel fired one additional shot, which struck the ground short of reaching the area of the truck. He then took cover again, and periodically peeked out to observe Toto. After he saw that Toto was motionless under the truck, Officer Ruppel advised dispatch, “I think he’s down.”

Officer Ruppel saw Sergeant Talbot arrive on the scene and approach from Scobie Pond Road behind Ruppel's position. At that time, Officer Ruppel was unsure if Toto was injured or if he was "playing possum" and was aiming at them from the ground.

Officer Ruppel and Sgt. Talbot approached Toto while two additional police cruisers arrived on scene on the other side of the pickup truck. Officer Ruppel and Sgt. Talbot warned the arriving officers to back-up because they were unsure what, if anything, Toto was doing.

When Officer Ruppel and Sgt. Talbot reached Toto, he was still lying on the ground. At Sgt. Talbot's direction, Officer Ruppel prepared to handcuff Toto but soon realized that handcuffs were unnecessary due to Toto's medical condition.

Later, Officer Ruppel turned over his handgun and ammunition to Sgt. Talbot at the scene. Ruppel recalled that when he turned over his weapon, a resident from the area approached and said, "Hey, I heard stuff whizzing by my house. You may want to check this house, my house didn't get hit."

After fire and ambulance units arrived on scene to provide medical assistance, Officer Ruppel returned to the Derry Police Department and turned in his uniform before going to the hospital to be examined. That examination revealed that Officer Ruppel sustained a minor cut to his hand.

Ruppel did not recall having any contact with Andrew Toto prior to the shooting incident and that he never heard Toto say anything during the entire event.

D. Other responding police officers' statements

1. Sergeant Christopher Talbot

On January 22, 2015, Sergeant Christopher Talbot spoke with investigators about the shooting. He described how on the day of the incident, he saw Officer Ruppel's police SUV cruiser parked in the middle of the road with multiple civilian vehicles 20 to 30 yard behind it when he arrived. Sgt. Talbot parked his police cruiser behind Officer Ruppel and at a slight angle between Officer Ruppel and the civilian motorists.

Initially, Sgt. Talbot could not see Toto's truck and assumed that he was still in the truck. He radioed Officer Ruppel to suggest that they use the loud speaker to get Toto out. Sgt. Talbot retrieved his rifle and took position behind his own passenger side door, attempting to get a line of sight on the truck. He waved to the civilian motorists to leave the area. Sgt. Talbot then saw that Officer Ruppel was in a shooting stance with his pistol out. Sgt. Talbot heard what he thought were three rounds fired in rapid succession by Officer Ruppel. Sgt. Talbot said that he did not hear any shots that preceded Officer Ruppel's shots. Sgt. Talbot immediately advised dispatch, "Shots fired. Shots fired."

Sgt. Talbot ran over to Ruppel's cruiser. Ruppel said that he had been shot at, then returned fire, and did not know if he had hit Toto. He reported that Toto was now down on the ground.

Once additional police cruisers arrived to the area and confirmed that the suspect appeared to be unarmed, Sgt. Talbot coordinated a tactical approach among the officers: Sgt. Talbot approached from the rear of the truck; Officer Ruppel from the front; and Officers Rivera and Hardy approached from the opposite side.

As Sgt. Talbot neared the truck, he saw a shotgun in the truck bed with the butt end of the gun sticking out toward Toto's position and the barrel facing down and across the bed of the truck towards the passenger side of the truck. He saw Toto was on the ground, face down, bleeding heavily from his face/chest region. Sgt. Talbot instructed Officer Ruppel to handcuff Toto, but changed his mind when it became apparent that Toto was no longer a threat.

Sgt. Talbot called for emergency medical services to move in, and then secured Officer Ruppel's firearm and magazines. He observed some blood on the handle of Ruppel's handgun that he later learned was from a minor cut on Ruppel's hand.

Sgt. Talbot only spoke briefly with Officer Ruppel at the scene, who said that he did not know how many times he had been fired at or how many times he returned fired.

2. Officers Raul Rivera and Ryan Hardy

On January 21, 2015, and January 25, 2015, respectively, Derry Officers Raul Rivera and Ryan Hardy independently spoke with investigators.

On January 21, 2015, Officers Rivera and Hardy responded individually in cruisers to the area of Scobie Pond Road to assist Officer Ruppel. Both officers were traveling from the west on Scobie Pond Road, and arrived on scene after the shots were fired. Officer Rivera recalled that Sgt. Talbot advised to them to stop, whereupon they backed up their cruisers for safety.

Officer Rivera observed Toto was lying on the ground near his truck, not moving. After he retrieved his rifle and took cover on the driver's side of the engine block of his police cruiser, Officer Rivera radioed that Toto was not moving. Officer Hardy retrieved a ballistic shield for cover, and at Sgt. Talbot's direction both men made a tactical approach.

Both officers recalled that Toto was face down on the ground. Officer Rivera noted the right side of Toto's face was to the ground while Officer Hardy recalled that Toto was nonresponsive, but appeared to be breathing periodically.

Both officers recalled that they saw a long-gun in the bed of Toto's truck. Officer Hardy also saw multiple shotgun shells, both red and green in color, all over the ground near the suspect. Emergency medical services were called to assist Toto. The officers remained with Toto until emergency medical services arrived, and transported him to Parkland Medical Center.

E. Other witness interviews - background on Andrew Toto

1. Jean Toto

Andrew Toto's wife, Jean Toto ("Jean"), was interviewed the day of the shooting. She said that Toto had been previously diagnosed with paranoid schizophrenia, but he was not receiving medical treatment or taking medication. She described how Toto was disabled due to mental health issues, was an alcoholic, and had been drinking heavily on and off since the Saturday before the shooting incident. Jean said that Toto would generally buy Yukon Jack alcohol nips and drink 10 at a time. She also said that a friend of Toto's had recently passed away and Toto cried and was emotional when talking about the loss.

The day before the shooting incident, Toto was intoxicated but drove to pick up his daughter at school. He later called Jean at work on Tuesday upset. He stated that he received a call from someone at New Hampshire Division of Child Youth and Families (DCYF) who had safety concerns that Toto had driven drunk with his daughter in the car. He "blew up" to Jean about DCYF calling, swearing and stating that he did not want "those people" coming to his house. He said words to the effect of, "What's the point?" and "I'm

going to get the shotgun and blow my chest out. You can clean it all up along with that b-i-t-c-h from DCYF.” He also said, “Fuck these people. I’m going to end it all.” Jean arranged for her daughter go to a friend’s house after school. Worried about Toto, she started calling him throughout the day. Toto would hang up on her, so she would wait approximately 15 minutes before calling back again.

When Jean arrived home Tuesday evening, Toto was still drunk and upset about DCYF. She tried to change the subject because in the past when he was drunk and upset he would generally settle down and go to sleep. Later around 7:30-8:00 p.m., Toto became upset about his deceased friend. He spoke with his friend’s brother on the phone, and at one point, Jean heard Toto scream, “Fucking whore, I’m going to fucking kill her.” Toto had become upset about a female that lived next door for backing into her driveway and leaving her lights on shining into the front window. Toto retrieved his shotgun and threatened to shoot the neighbor’s windows out. However, Jean intervened by grabbing the barrel of the shotgun and convinced Toto to go to sleep.

At 3:30 a.m. Wednesday morning, Jean woke up when she heard Toto call out her name, saying that there were snakes on him and asking why she did not get them off of him. He then began complaining about DCYF again. Jean was scheduled to be at work that morning, but considered calling out because of Toto’s state. Each time she began to get ready for work, Toto got upset again. He told her that if she drove their daughter to school that he would be gone when she got back. Jean’s daughter did not want to go to school because she was worried that something bad would happen. Toto said words to the effect of, “Fuck this, you guys would be better off without me anyway.” A few minutes before he left

the home that morning, Toto said he was going to ice skate across the Massabesic and that “they” would not find his body until spring. He then left the house with the shotgun.

Jean immediately called 911 and reported that her husband was drunk and took off out of the driveway in his truck. She told police that she thought he was suicidal and probably looking for “suicide by cop,” as Toto had previously threatened “suicide by cop” twice within the past two years.

2. Victor Young

Victor Young, a friend of Andrew Toto, was interviewed following the shooting. Victor had known Toto for 20 years. Toto had worked for him but that ended six years earlier because of Toto’s drinking problem. Victor considered himself a close friend of Toto’s, and someone to whom Toto would talk to.

Victor explained that it was normal for Toto to be drinking at any point in the day, and that Victor was concerned Toto would kill someone due to his drunk driving. Victor never heard Toto mention suicidal thoughts before, but believed Toto suffered from depression, schizophrenia, and drug and alcohol addiction.

The day before the shooting, Toto drove by Victor’s home at approximately 9:30 a.m. Toto was “wasted,” but refused Victor’s offer to drive him back home. In the afternoon following the shooting, Victor received a call from Jean Toto, who told him that Toto had left angry, took his shotgun when he left, and had made comments about committing suicide.

F. Autopsy

An autopsy was conducted on Andrew Toto’s body on January 22, 2015. Chief Medical Examiner Thomas A. Andrew determined that Toto died as a result of a single

perforating gunshot wound to the left-front of his chest. There was no stippling found adjacent to this gunshot wound, indicating that the gunshot was not fired from close-range.

Toto suffered no other wounds to his body except one superficial abrasion over the bridge of his nose. A chemical analysis of his blood revealed a blood alcohol content of .222.² Further examination of Toto's body revealed acute and chronic alcoholism with cirrhosis of the liver.

G. Physical Evidence

Scobie Pond Road is a well settled area with residential houses lining one side of the road where this event occurred. The road has no painted lines and is wide enough for two lanes of traffic. The speed limit on the relevant stretches of Scobie Pond Road is 30 M.P.H.

Toto's pick-up truck was parked perpendicular to Scobie Pond Road in the entrance of Julian Road. The truck has a manufactured width of 80 inches (6.67 feet). Officer Ruppel's police cruiser was parked 247 feet southeast of Toto's truck, in the right hand lane of Scobie Pond Road headed westbound. The cruiser has a manufactured length of approximately 16.4 feet. Given that Toto was on the far side of his truck when he was struck, and accounting for the manufactured width of Toto's truck and the length of Officer Ruppel's cruiser, Officer Ruppel was approximately 270 feet (90 yards) away when his bullet struck Andrew Toto.

In the bed of the truck near the rear wheel well, investigators recovered Toto's 12-gauge, single barrel shotgun. There was a live round loaded in the chamber. Consistent with Sgt. Talbot's report, investigators found the shotgun with the butt end of the gun resting on the side of the truck toward Toto's last standing position and the barrel facing down and

² The legal limit for operating a motor vehicle in New Hampshire is .08. Toto was more than 2 and ½ times over that legal limit.

across the bed of the truck. From this position, the gun was still easily accessible even with the barrel of the gun under a hand truck lying in the truck bed.

On the ground on the driver's side of Toto's truck, investigators found 3 spent shotgun shell casings, along with 8 live shotgun shell rounds, and several pieces of shotgun round debris including wadding from shotgun shell rounds or shell top. Investigators found additional debris from the three spent shotgun rounds on the passenger side of the truck both off of the road and in the middle of the road in line between the truck and Officer Ruppel's cruiser. There were 4 bullet holes on the passenger side of the truck, which investigators believed were caused by Officer Ruppel's return gunfire.

On the ground near the rear passenger side of Officer Ruppel's police cruiser, investigators found a total of 9 discharged cartridge casings from Ruppel's Glock .40 caliber semiautomatic pistol. The nine empty casings corresponded to the difference between the ammunition Officer Ruppel was carrying prior to the event, and the ammunition accounted for by investigators afterward.

Investigators retrieved video footage from Officer Ruppel's cruiser camera that recorded the shooting incident. The raw footage showed Officer Ruppel driving on Scobie Pond Road and turning around after Toto's truck passed in the opposite direction. Once the cruiser was traveling in the same direction as the truck, the truck could be seen pulling away, and using the oncoming lane to pass a dark colored sports utility vehicle (Ramsey) and a silver sedan (Blake) that were traveling in the same direction. At the same time, another sports utility-type vehicle was traveling eastbound head-on in the oncoming lane. This video shows Officer Ruppel's attempt to follow the truck, and the three private citizens' vehicles pulling over to allow him to pass. Moments later, following a curve in the road, Toto's truck

made a right-hand turn onto Julian Road, stopping perpendicular to Scobie Pond Road and right outside of Jacqueline Lane's home. Officer Ruppel's cruiser stopped in the road a distance from the truck. This positioned the cruiser's camera almost directly at Toto's truck.

The quality of the recording and the 250-foot distance between the camera and Toto's truck makes it difficult to distinguish specific detail or clear features from the video. However, some of Toto's movements and actions, including his firing the shotgun at Officer Ruppel, can be observed.

On the recording, Toto can be seen exiting the truck and standing behind the bed of the truck near the cab. He aimed and immediately fired a weapon in Officer Ruppel's direction. Although it is not possible from the video to identify the weapon as a shotgun, the gunshot can be detected from the smoke emitting from Toto's position.

After firing the weapon, Toto moved back behind the cab of the truck for cover. A few moments later, Toto moved back behind the bed of the truck again, aimed his weapon and fired a second shot at Officer Ruppel. This shot could be detected by the muzzle flash, and smoke. After firing this shot, Toto again moved behind the cab of the truck for cover.

A few moments later, Toto moved to the rear of the truck's bed, which still gave him cover since it was partially obstructed by a utility pole. At that moment, it was unclear whether one or two rounds were fired from behind the camera (from Officer Ruppel's position) toward the truck. These shots could be seen since they fell short of the truck and kicked up debris on the ground nearby. Toto lingered at the rear of the truck, possibly to obtain a better shot at Officer Ruppel. He crouched down so the top half of his body was

obscured by the bed of the truck, and crept back toward the truck's cab.³ Once there, there was a moment when no movement could be detected, and then Toto appeared over the hood of the truck. Toto fired a third shot from that position toward Officer Ruppel. The shot debris and/or some projectile(s) fell short of the cruiser's camera, and can be seen hitting the snow in the foreground creating a puff of debris.

Following his third shot, Toto moved back behind the cab of his truck. A few moments later, he stepped away from the cab with something extended upward that was dark in color. After a moment, he stepped out and then turned toward the rear of the truck. As he turned, Toto twisted sideways and fell to the ground.⁴ A moment later, another gunshot could be seen coming from behind the camera (Officer Ruppel's position) that fell far short of the truck, and created another puff of debris/ice.

The entire event, from the time Toto stepped out of the truck until he fell to the ground lasted less than two minutes.

Investigators were unable to determine from the raw footage what Toto extended upward as he stepped from behind the cab of the truck the last time. The raw cruiser video footage was sent to the New York State Police Forensic Video and Multimedia Services Unit to be forensically enhanced. The enhancement allowed investigators to zoom in on Toto's truck and the seconds when Toto stepped away from the cab for the last time. However, the enhancements that were done could not increase the video's resolution.

Upon examination of the enhanced video, and upon comparison with the raw video, it appears that Toto extended both arms upward as he side-stepped out from behind his truck's

³ Toto could be seen doing this because his legs were visible under the truck.

⁴ Although not obvious from the video, we know Toto fell because he had just been shot.

cab, just before turning and moving to the rear of the truck. However, even with the enhancement, it is unclear what, if anything, Toto had in his raised hands, or when and how the shotgun ended up in the bed of the truck.

Finally, video footage from the other three police cruisers that arrived on the scene was collected and reviewed. That footage contributed no useful details to the shooting investigation. Sgt. Talbot's cruiser camera was not facing the correct angle so as to capture any relevant footage, and Officers Rivera and Hardy did not arrive until after Andrew Toto had been shot.

III. APPLICABLE LAW AND LEGAL STANDARDS

New Hampshire's laws regarding self defense, defense of others and the use of physical force by law enforcement are set forth in RSA Chapter 627. Under RSA 627:5, II (a), a law enforcement officer, like any private citizen, is justified in using deadly force when he reasonably believes that such force is necessary to defend himself or a third person from what he reasonably believes is the imminent use of deadly force. Under RSA 627:9, II, "deadly force" is defined as any assault which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury. Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person constitutes deadly force.

The phrase "reasonably believes" means that the actor "need not have been confronted with actual deadly peril, as long as he could reasonably believe the danger to be real." State v. Gorham, 120 N.H. 162, 163-64 (1980). The term "reasonable" "is determined by an objective standard." State v. Leaf, 137 N.H. 97, 99 (1993). Further, all the

circumstances surrounding the incident should be considered in determining whether there was a reasonable belief that deadly force was necessary to defend oneself or another. See id. at 99; Aldrich v. Wright, 53 N.H. 398 (1873). The reasonableness standard also applies in a situation where a person who uses deadly force is mistaken about the situation or the necessity of using deadly force. Thus, either a private citizen or police officer may be justified in using deadly force if he reasonably believed that he or another person was in imminent danger of the use of deadly force, even if, in fact, they were not, and his belief is objectively reasonable.

Moreover, when analyzing the reasonableness of an actor's use of deadly force, the inquiry must focus on the situation from the standpoint of a reasonable person facing the same situation. That examination cannot be made with the benefit of hindsight, which is afforded by one viewing the circumstances after the fact.

In Graham v. Connor, 490 U.S. 386 (1989), the United States Supreme Court discussed the standards by which a police officer's conduct would be judged when excessive force claims were brought against him. The Court confirmed that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Id. The Court went on to explain how to determine what is reasonable in situations where police officers use force:

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.

Id. at 396-97; see also Ryburn v. Huff, 132 S. Ct. 987, 992 (2010). The Eleventh Federal Circuit has noted that:

The Supreme Court has emphasized that there is no precise test or ‘magical on/off switch’ to determine when an officer is justified in using excessive or deadly force. ... Nor must every situation satisfy certain preconditions before deadly force can be used ... Rather, the particular facts of each case must be analyzed to determine whether the force used was justified under the totality of the circumstances.

Garczynski v. Bradshaw, 573 F.3d 1158, 1166 (11th Cir. 2009) (citations omitted). That is because “the law does not require perfection – it requires objective reasonableness.” Phillips v. Bradshaw, 2013 U.S. Dist. LEXIS 44646 *55-56 (S. Dist. Fl. 2013). Specifically, the law accounts for the often fast moving nature of dangerous situations and the necessity of making decisions in less than ideal circumstances. See Ryburn v. Huff, 132 S. Ct. 987, 991-92 (2012) (chastising the lower circuit court for not “heed[ing] the District Court’s wise admonition that judges should be cautious about second-guessing a police officer’s assessment, made on the scene, of the danger presented by a particular situation.”).

IV. ANALYSIS AND CONCLUSION

Based on all the facts and circumstances of this case, the Attorney General concludes that Andrew Toto’s entire course of conduct created a dangerous situation that escalated to the point where it became reasonable for Officer Ruppel to conclude that he and others were facing an imminent threat of deadly force by Andrew Toto.

The evidence shows that from the moment he got out of his truck, aimed, and repeatedly fired his shotgun at Officer Ruppel, Toto posed a threat of death or serious bodily injury to Officer Ruppel, the drivers and passengers of the cars stopped behind Ruppel, and the residents inside their homes on Scobie Pond Road. All three of Toto’s shots were aimed at Officer Ruppel and his cruiser. The shots were fired in a residential neighborhood in close proximity to homes at a time when residents were inside those homes. Toto’s gunshots were

also fired in the direction of cars that were forced to a stop immediately behind Officer Ruppel's cruiser in the middle of the road, putting those cars in Toto's line of fire.⁵ Based on all his conduct, Andrew Toto's decision to shoot at Officer Ruppel appears to have been a purposeful attempt to kill Officer Ruppel and in the process, Toto put other peoples' lives in danger.

That Toto may have had his arms up just seconds before he fell does not change the analysis or ultimate conclusion that Officer Ruppel's actions were justified. While one could surmise that he was attempting to surrender, nothing about Toto's conduct to that point would have led a reasonable police officer to conclude that was so. Toto knew that he was being pursued by the police. Rather than simply pull over to the side of the road, he parked his truck in a position that would provide him cover, then got out and fired a shot in Officer Ruppel's direction. When Ruppel returned fire, Toto did not call out, throw his shotgun out of reach, or take any other action that suggested that he was no longer a threat. Rather, he repositioned himself behind the truck and fired again. Officer Ruppel told investigators that right before he fired and Toto fell to the ground, he saw Toto moving toward the back of the pickup truck. He could not see Toto's arms, but believed Toto was still armed and seeking another vantage point from which to fire.

Without the benefit of hindsight or video enhancement, Officer Ruppel's perception that Toto represented a deadly threat to him and others was objectively reasonable under the circumstances as Officer Ruppel knew them to be. Toto's actions, coupled with the information that Toto had talked about trying to commit "suicide by cop" provided Officer Ruppel ample basis to believe that Toto's intent was to kill or be killed. Even if Toto had

⁵ One of those cars had 3 children inside it.

placed the shotgun in the bed of the truck before being shot, it is possible he did so to lure Officer Ruppel out from behind his cruiser to get a better shot at him. That possibility is buttressed by the fact that Toto's shotgun - a single shot firearm - had been reloaded after the last shot, meaning that he could have quickly accessed it and turned it on Officer Ruppel again.

Based on all the facts and circumstances known to Officer Ruppel at the time he shot Andrew Toto, and examining the situation from the standpoint of an objective police officer in Ruppel's position, it was reasonable for Officer Ruppel to conclude that Toto was about to use deadly force against him and posed a risk of deadly force to the private citizens who were stopped behind him. Therefore, Officer Ruppel was legally justified in using deadly force against Andrew Toto.

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